IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 186 of 2003
with
CIVIL APPLICATION No 438 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUBODHBHAI
Versus
SUNILKUMAR

Appearance:
1. First Appeal No. 186 of 2003
MR RA MISHRA for Appellant
MR PIYUSH M UNADKAT for Respondent

CORAM : MR.JUSTICE D.K.TRIVEDI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 24/03/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE D.K.TRIVEDI)

1. Admit. Mr.Piyush M. Unadkat, learned advocate, waives service of notice of admission on behalf of the respondent. By consent of the learned advocates appearing in the matter, this appeal is fixed for final hearing forthwith. The filing of paper-book is dispensed with, as the respondent - original plaintiff has consented for modification of decree under challenge. Hence, we dispose of this appeal without calling for Record and Proceedings. The necessary farad and decree form are ordered to be furnished by the learned advocate for the appellant.

2. Heard Mr.R.A.Mishra, learned advocate for the appellant and Mr.Piyush M. Unadkat, learned advocate for the respondent.

3. This appeal is filed by the appellant - original defendant and challenged the judgment and decree dated 29.09.2002 passed by the learned 2nd Joint Civil Judge (S.D.), Bharuch, in Special Civil Suit No.159 of 1996, filed by the respondent - original plaintiff against the appellant - original defendant.

4. Mr.Mishra, learned advocate for the appellant original defendant has contended before us that during the pendency of the trial and after arguments were heard, the appellant - original defendant had agreed and accepted his liability in respect of the suit claim and according to him, though the documents were prepared by his advocate, the same could not be tendered during the trial and according to him, the appellant - original defendant has accepted his liability to pay sum of Rs.66,109-00 and interest on the said amount. Considering the statement made by Mr.Mishra, we have as per order dated 29.01.2003, issued notice to the respondent on condition that the appellant shall deposit before the Registry of this Court on or before 07.02.2003 a sum of Rs.66,109-00 plus interest at the rate of 12% P.A. from 08.05.1996 by recording that the appellant has accepted his liability before the trial Court on a suit filed by the respondent - original plaintiff. As per directions given by this Court, Mr.Mishra had deposited a sum of Rs.1,12,200-00 before the Registry of this Court on 07.02.2003.

5. Mr.Unadkat, learned advocate for the respondent original plaintiff appeared, in response to the notice before us and considering the stand taken by the appellant - original plaintiff, by accepting his

liability as aforesaid. Mr.Unadkat had requested us for time to ascertain this aspect from his client, whether the offer made by the appellant - original defendant is acceptable to him or not. Accordingly, considering the request made before us, we had adjourned the matter to enable Mr.Unadkat to take instruction from his client. When the matter was called out, Mr.Unadkat has informed us that he has received instruction from his client, wherein his client - original plaintiff has shown his willingness to accept the amount as deposited by the appellant original defendant before this Court and he has no objection, if the decree under challenge is modified to that extend. Mr.Unadkat has also submitted that the cost be provided in respect of this appeal, filed before this Court to be paid to the respondent - original plaintiff. The copy of the letter of the respondent plaintiff addressed to Mr.Unadkat is taken on record.

5. In view of the stand taken by the parties and their advocates, the appeal filed by the appellant original defendant deserves to be modified only to that extend as agreed between the parties and accordingly, the decree is modified to the above extend and the suit is accordingly decreed against the appellant - original defendant and in favour of the respondent - original plaintiff and the plaintiff is entitled to get a sum of Rs.66,109-00 and the interest thereon at the rate of 12% P.A. from the date of the suit. In fact, the appellant had deposited the principle amount together with interest calculating from 8th May, 1996, it comes to Rs.1,12,200-00, which is lying with the Registry of this Court. Mr.Mishra, has no objection if the said amount deposited by the appellant plaintiff with the Registry of this Court is withdrawn by the respondent - original plaintiff. This modified decree will be full and final. In view of the stand taken by the respondent - original plaintiff, the amount deposited by the appellant original defendant with the Registry of this Court is permitted to be withdrawn as aforesaid. It is also agreed that on receipt of said amount, the decree will stand fully satisfied and, there is no outstanding amount remaining to be paid by the appellant - original defendant to the respondent original plaintiff.

6. The decree under challenge is modified, as above, and the plaintiff is entitled to get a sum of Rs.66,109-00 with interest at the rate of 12% P.A. from 8th May, 1996 and the respondent - original plaintiff is permitted to withdraw the said amount and on such withdrawal, the decree will stand fully satisfied and the appellant original defendant has no liability to pay any

amount in respect of the decree. The appeal is, accordingly, allowed in the above terms. No order as to costs.

In view of the order passed in the main matter, the Civil Application for stay does not survive and the same is disposed of accordingly with no order as to costs.

[D. K. Trivedi,J.]

[K. M. Mehta,J.]

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